

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

GREATER ST. LOUIS CONSTRUCTION)
LABORERS WELFARE FUND, et al.,)
)
Plaintiffs,)
)
v.) No. 4:09CV497 RWS
)
RETAINING WALLS, INC.,)
)
Defendant.)

MEMORANDUM AND ORDER

Plaintiffs, trustees of the Greater St. Louis Construction Laborers Pension, Welfare, Vacation and Training Funds and the Funds themselves (the “Construction Laborers Funds”) brought this action under Section 301 of the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1975, as amended, 29 U.S.C. § 1132, seeking to collect delinquent contributions and other amounts from Defendant Retaining Walls, Inc.

Construction Laborers Funds filed this action on March 30, 2009. Retaining Walls’ registered agent was served on April 6, 2009. Retaining Walls failed to file a responsive pleading and the Clerk entered default on May 4, 2009. Construction Laborers Funds move to compel Retaining Walls to submit to a financial compliance examination.

Retaining Walls executed a collective bargaining agreement with Laborers Local 42-53-110 on September 10, 2008, which obligated it to pay contributions to Construction Laborers Funds and file monthly contribution reports. The terms of the collective bargaining agreement and plans also provide that the trustees of Construction Laborers Funds be permitted to

periodically perform a financial examination of Retaining Walls' books and records to ensure that payments have been properly made in accordance with the terms of the collective bargaining agreement. Despite repeated requests, Retaining Walls has failed and refused to submit monthly report forms for the period of September 10, 2008 to the present and has failed and refused to submit its books and records for a financial examination.

Section 7.09 of the collective bargaining agreement provides:

Audits and Suits to Collect Contributions: The Employer agrees that Welfare, Pension, Fund, Supplemental Dues shall each have the right to verify the accuracy of reports and contributions made by the Employer, by having their respective employees, agents, representatives or accountants audit and examine during the Employer's regular business hours, the Employer's weekly payroll journal, individual earnings records of employees, copy of Federal payroll tax returns and other payroll records as may be necessary to allow such examiner to determine whether the Employer is making full and complete reports and contributions as required the Employer's collective bargaining agreement with the union.

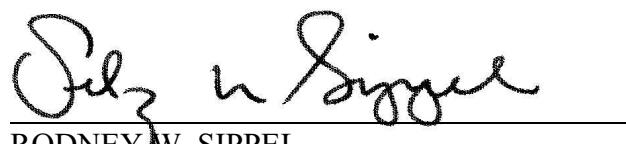
Construction Laborers Funds therefore have the right to audit Retaining Walls.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' motion to compel an accounting [#4] is
GRANTED.

IT IS FURTHER ORDERED that Defendant submit Contribution Reports Forms to Plaintiffs and that Defendant submit its records to an audit.

Dated this 14th day of May, 2009.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE